

JOHN COOPER	:	CIVIL ACTION
	:	
V.	:	
	:	
MICHELE COOPER	:	NO. 08-5768

file an

FEB 23 2009

MARILEE KUNZ, Clerk
Dep. Clerk

1915.
2-25 of mailed to J. Cooper
M. Cooper

monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint"

Based upon plaintiff's financial statement, he is assessed an initial partial filing fee of \$7.79. The Superintendent or other appropriate official at SCI Frackville or at any prison at which plaintiff may be incarcerated will be directed to deduct from plaintiff's prison account--each time that the balance in plaintiff's inmate trust account exceeds \$10--an amount no greater than 20 percent of the money credited to plaintiff's account during the preceding month and forward that amount to the Clerk of Court until the filing fee is paid.

Plaintiff may not have known when he brought this action that he must pay the filing fee, and that even if the full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds that the action is: (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). If the Court dismisses the case for any of these reasons, the Act does not permit the prisoner to get his filing fee back.

We shall give plaintiff twenty (20) days from the date of this order to decide whether he wants to proceed with this case. If by that time, plaintiff decides not to proceed with the case, he need not pay the \$350 filing fee.²

² In deciding whether to proceed with this civil action, plaintiff should note that in order to bring suit under 42 U.S.C. § 1983, plaintiff must allege that a person acting under color of

For the foregoing reasons, it is, this 20th day of February, 2009, hereby ORDERED that: @lra

1. The petition is DENIED WITHOUT PREJUDICE to its reassertion in accordance with the terms of this order;
2. If plaintiff files with the Court within twenty (20) days from the date of this order a notice that he wishes to proceed with this action and thereby obligate himself to pay the \$350 filing fee, this action will be reinstated; and
3. The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:


JAMES KNOLL GARDNER, J.

state law deprived him of his constitutional rights. West v. Atkins, 487 U.S. 42 (1988). There are no allegations in plaintiff's complaint that would allow this Court to find that the defendant is a state actor or that she has violated plaintiff's constitutional rights.